IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.8663 OF 2005

Ashwini Anil Chavan. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.

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Mr.R. K. Mendadkar for the Petitioner.
Mrs. M.P. Thakur, AGP for the Respondents.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

April 24, 2006.

ORAL JUDGMENT (Per Dr. D.Y. Chandrachud, J.):

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at the request of Counsel taken up for hearing.

2. A caste certificate was issued to the Petitioner on 25th March 2003 certifying that she belongs to the Thakur Scheduled Tribe. The Second Respondent was moved for verification. The Police Inspector attached to the Vigilance Cell submitted a report dated 16th April 2005. The claim of the Petitioner to belong to the

Thakur Scheduled Tribe came to be rejected by the Scrutiny Committee by its order dated 15th October 2005 which is impugned in these proceedings. The Scrutiny Committee has adverted to the fact that the Research Officer attached to the Vigilance Cell has formed an opinion that the traits and characteristics of the Petitioner did not match with the Thakur Scheduled Tribe. The claim of the Petitioner was consequently rejected on the ground that the affinity test was not fulfilled.

3. On behalf of the Petitioner it has been submitted that neither the report of the Research Officer, nor for that matter the impugned order of the Scrutiny Committee discloses any application of mind on the question of affinity test. In order to consider this submission, it would be appropriate to extract the finding of the Scrutiny Committee on the affinity test in this case. The relevant finding in para 6(a) of the order is as follows :

> "The documents obtained by way of inquiry showed the caste as Thakur. However the Research Officer attached to Vigilance cell has given his observation that the traits, characteristics of the applicant do not match with the Thakur, Scheduled Tribe community. Thus, the applicant has not succeeded in the affinity test."

The rest of the order of the Scrutiny Committee is devoted to referring to the legal position enunciated in several decided cases. However, the only observation on whether the Petitioner fulfilled the affinity test is as extracted hereinabove. There is merit in the submission of the Petitioner that the Scrutiny Committee has not considered whether in the first place the Petitioner does fulfill requirement of the affinity test. The Scrutiny Committee is justified in taking the view that merely because the documents which have been produced contain a reference to the Petitioner or his relatives belonging to the Thakur Community that would not in itself be sufficient to demonstrate that she actually belongs to the Thakur Scheduled Tribe. Reference to the question of affinity is perfectly justified for the reason that the individual must be shown on evidence to belong to the Scheduled Tribe concerned. In such a case, there is no question of going behind an entry in the Presidential Order issued under Article 342(1) of the Constitution. The exercise is to determine whether the individual belongs to a Scheduled Tribe. This is perfectly justifiable and for that, recourse to the affinity test is legitimate. But while considering the question of affinity, it is necessary for the Scrutiny Committee to apply its own mind to the report of the Research Officer. The Scrutiny

Committee has not, for instance, considered in this case which of the responses of the Petitioner discloses an absence of affinity to the Scheduled Tribe in question. There is no discussion on facts or discussion on merits at all. The opinion of the Research Officer has to be duly considered by the Scrutiny Committee since the final decision is one which the Scrutiny Committee has to take. In this case there is a total absence of any reasoning on the question as to why the Petitioner failed to fulfill the affinity test.

4. In these circumstances, it would be necessary for this Court to remand the matter back to the Scrutiny Committee for its decision afresh in accordance with law having regard to the aforesaid observation. In order to facilitate a fresh decision upon remand and without going into merits of the claim of the Petitioner, we quash and set aside the impugned order of the Scrutiny Committee dated 15th October 2005. The Petitioner shall appear before the Scrutiny Committee for receiving directions on 9th May 2006. The Scrutiny Committee is directed to decide the matter afresh after furnishing the Petitioner an opportunity of being heard, within a period of six months. The Petitioner shall not claim any equity, in the event that her claim to belong to the Scheduled Tribe

concerned is rejected. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.